

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Murgio	Team: Squad #2	CCRB Case #: 202002952	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 04/26/2020 3:00 PM	Location of Incident: River Avenue and East 158th Street	Precinct: 44	18 Mo. SOL 10/26/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 04/29/2020 1:33 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 04/29/2020 1:33 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kieran Brennan	30990	965958	044 PCT
2. POM Ryan Brady	03653	964402	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Ryan Brady	Abuse: Police Officer Ryan Brady frisked § 87(2)(b)	
B.POM Kieran Brennan	Abuse: Police Officer Kieran Brennan frisked § 87(2)(b)	
C.POM Ryan Brady	Abuse: Police Officer Ryan Brady searched § 87(2)(b)	
D.POM Kieran Brennan	Abuse: Police Officer Kieran Brennan searched § 87(2)(b)	
E.POM Ryan Brady	Abuse: Police Officer Ryan Brady refused to provide his shield number to § 87(2)(b)	
F.POM Ryan Brady	Abuse: Police Officer Ryan Brady threatened to issue summons to § 87(2)(b)	
G.POM Kieran Brennan	Force: Police Officer Kieran Brennan used physical force against § 87(2)(b)	
H.POM Ryan Brady	Force: Police Officer Ryan Brady used physical force against § 87(2)(b)	
I.POM Ryan Brady	Discourtesy: Police Officer Ryan Brady spoke discourteously to § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		
§ 87(4-b) § 87(2)(g)		

## Case Summary

On April 29, 2020, § 87(2)(b) filed this complaint via the CCRB website.

At approximately 3:00 p.m. on April 26, 2020, § 87(2)(b) was walking westbound on East 158th Street in the Bronx towards River Avenue while smoking a cigarette. After he crossed River Avenue to the west side and threw the cigarette down, two officers, Police Officer Ryan Brady and Police Officer Kieran Brennan of the 44<sup>th</sup> Precinct, approached him in a marked vehicle. § 87(2)(b) began to walk away. The officers exited the vehicle and stopped § 87(2)(b). Police Officer Brady and Police Officer Brennan placed § 87(2)(b) in handcuffs and then frisked § 87(2)(b) (**Allegation A: Abuse of Authority – Frisk – § 87(2)(g)** and **Allegation B: Abuse of Authority – Frisk – § 87(2)(g)**) and searched his pockets (**Allegation C: Abuse of Authority – Search (of person) – § 87(2)(g)** and **Allegation D: Abuse of Authority – Search (of person) – § 87(2)(g)**). During their interaction, § 87(2)(b) asked Police Officer Brady for his shield number; Police Officer Brady allegedly did not provide this information verbally (**Allegation E: Abuse of Authority – Refusal to provide shield number – § 87(2)(g)**). After the officers began to issue a summons to § 87(2)(b) for the § 87(2)(b), Police Officer Brady threatened to give additional summonses to § 87(2)(b) (**Allegation F: Abuse of Authority – Threat of summons – § 87(2)(g)**). After the officers issued § 87(2)(b) his summons, they removed his handcuffs. Both Police Officer Brennan and Police Officer Brady allegedly pushed § 87(2)(b) away once his handcuffs were removed (**Allegation G: Force – Physical force – § 87(2)(g)** and **Allegation H: Force – Physical force – § 87(2)(g)**). As the officers were leaving, Police Officer Brady allegedly told § 87(2)(b) that he was being “childish” and “less of a man” (**Allegation I: Discourtesy – Word – § 87(2)(g)**). Police Officer Brady and Police Officer Brennan then drove away. § 87(2)(b) received Summons #§ 87(2)(b) for “§ 87(2)(b)” (Board Review 01, 02).  
§ 87(4-b) § 87(2)(g)  
§ 87(2)(b)  
§ 87(2)(b)

Body-worn camera (BWC) footage from the BWCs of Police Officers Brady and Brennan are linked to IAs #45-46 (Board Review 03-04) and summarized in IA #47 (Board Review 05).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Ryan Brady frisked § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Kieran Brennan frisked § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Ryan Brady searched § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Kieran Brennan searched § 87(2)(b)**

§ 87(2)(b) provided an initial telephone statement on May 8, 2020 (Board Review 06), was interviewed later on May 8, 2020 by telephone (Board Review 07) and provided a follow-up telephone statement on June 9, 2020 (Board Review 08). Police Officer Brennan was interviewed at the CCRB on February 5, 2021 (Board Review 09). Police Officer Brady was interviewed at the CCRB on February 26, 2021 (Board Review 10).

It is undisputed that § 87(2)(b) was smoking an object, which he threw to the ground, and was stopped by Police Officer Brady and Police Officer Brennan immediately afterwards and placed in handcuffs. While § 87(2)(b) was in handcuffs, he refused to verbally provide his name to officers and told them to instead remove his wallet from his pocket and remove his ID from there. During this time, § 87(2)(b) who was wearing multiple layers of clothing with several pockets, directed the officers to several different locations on his person where his wallet might be. As § 87(2)(b) named

the locations, Police Officer Brady and Police Officer Brennan followed his directives and alternately frisked and searched in the specific areas to which § 87(2)(b) directed them. Ultimately, Police Officer Brady entered § 87(2)(b)'s pants pocket and retrieved his wallet.

Police Officer Brady testified that he and Police Officer Brennan observed § 87(2)(b) smoking a marijuana cigarette and wanted to issue § 87(2)(b) a summons rather than arresting him, but § 87(2)(b) refused to tell the officers his name. The officers searched § 87(2)(b)'s pockets in the areas where § 87(2)(b) gave consent for the purpose of finding his wallet.

Police Officer Brennan testified that after being asked for his name, § 87(2)(b) stated that he did not have to give his name and that he had his ID on him. § 87(2)(b) told the officers to find his ID and take it from his person. § 87(2)(b) did not seem to know where his ID was and gave the officers conflicting statements of where it was located. Police Officer Brennan believed that by telling the officers where his ID was, § 87(2)(b) was offering consent for the officers to get his ID from his pocket.

Police Officer Brady's BWC footage shows Police Officer Brady ask § 87(2)(b) where his ID is at timestamp 2:19. § 87(2)(b) tells the officers that his ID is in a wallet in his back pocket, and Police Officer Brennan checks there but does not appear to find his wallet there. At 2:35, § 87(2)(b) explains to the officers that he is wearing pajamas underneath his outer clothing. At 2:50, Police Officer Brennan asks § 87(2)(b) for his first name, and § 87(2)(b) instead replies that his wallet is "right here in my pocket," while moving his right hip forward and sticking it out towards the officers. § 87(2)(b) continues complaining about being stopped. At 3:34, Police Officer Brady asks § 87(2)(b) how he gets to the pocket at § 87(2)(b)'s right hip that § 87(2)(b) previously stuck forward. § 87(2)(b) says that he himself can get it and tells the officers to remove his handcuffs. At 3:50, both officers ask § 87(2)(b) for his name, and § 87(2)(b) again replies that he has an ID in his pocket and that the officers will have to go into his pocket. Police Officer Brady asks § 87(2)(b) if he has to unzip part of the jumpsuit, and § 87(2)(b) tells him that he can unzip it. Police Officer Brady unzippers the wrong place. § 87(2)(b) lifts his chin, presenting the central zipper of his jumpsuit, and tells Police Officer Brady to "start from the middle." He tells Police Officer Brady where to get his wallet, and Police Officer Brady removes his wallet. Police Officer Brady tells § 87(2)(b) that the officers will check his name. At 4:35, § 87(2)(b) says that he has been "dealing with the police for 41...years," and that he was arrested in Florida and has been to prison twice. At no point does § 87(2)(b) appear to be cowed by the officers; rather, he remains in control and issues instructions, rather than appearing to be simply acquiescing to the requests of the officers.

The courts have held that one of the exceptions to the 4<sup>th</sup> Amendment's prohibition against warrantless searches is consent. Schneckloth v. Bustamonte, 412 U.S. 218 (1972) notes that consent must be voluntarily given and not merely be a submission to an express or implied assertion of authority. It explains that the characteristics of the accused person and the details of the interaction must be assessed to determine whether the accused was coerced into providing consent for a search (Board Review 21). Factors to be taken into account include the youth of the accused, their lack of education or low intelligence, the lack of advice to the accused of their constitutional rights, the length of the person's detention, repeated and prolonged nature of questioning, and the use of physical punishment, including the deprivation of food or sleep.

United States v. Canipe, 569 F.3d 597 (2009) further notes that when a defendant has prior criminal convictions, that person is "no stranger to the police or the criminal justice system," and therefore is unlikely to be simply acquiescing to officer authority (Board Review 22).

§ 87(2)(g)

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Ryan Brady refused to provide his shield number to § 87(2)(b)**

§ 87(2)(b) testified that after he asked Police Officer Brady for his shield number, and Police Officer Brady pointed to his shield number without saying his name or shield number verbally.

BWC footage captured by Police Officer Brady's camera shows that, at timestamp 4:53, § 87(2)(b) asks Police Officer Brady for his shield number. Police Officer Brady provides his shield number verbally. § 87(2)(b) does not say that he needs this information another way.

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer Ryan Brady threatened to issue summons to § 87(2)(b)**

It is undisputed that § 87(2)(b) threw down something that he had been smoking immediately before the officers stopped him. It is further undisputed that Police Officer Brady made a comment during the incident about issuing § 87(2)(b) additional summonses, beyond the one he received for the § 87(2)(b). As mentioned above, § 87(2)(b) received Summons #§ 87(2)(b) for § 87(2)(b)" (Board Review 01, 02).

§ 87(2)(b) testified that he threw down a cigarette he had been smoking while crossing the street approximately three seconds before noticing Police Officer Brady and Police Officer Brennan's van.

BWC captured by both officers' cameras show a few isolated individuals walking past from time to time but does not show crowds gathering during the incident. The section of sidewalk where the incident occurred is largely empty throughout § 87(2)(b)'s encounter with the officers. At timestamp 7:10 in Police Officer Brady's BWC, he can be heard saying, "Let's write him a couple summonses," to Police Officer Brennan while standing next to § 87(2)(b).

Police Officer Brady testified that § 87(2)(b) could have been issued additional summonses for disorderly conduct and for littering (for throwing his alleged marijuana cigarette into the grass). Police Officer Brady stated that the area where the stop occurred is "a crowded street" with "a lot of people," and that § 87(2)(b) yelled to "other individuals" during the stop. According to Police Officer Brady, "more individuals and people start[ed] to form" towards the end of the encounter and "there were individuals around watching the whole incident." When shown Police Officer Brennan's BWC from 12:37-12:44 and asked if that was the point in the incident when the crowds he mentioned formed, Police Officer Brady clarified that there were "people congregating or people forming." He said that there were "people around" and "multiple people walking by." He denied

that he said that there was a “massive crowd,” but stated that there were “multiple individuals.” Police Officer Brady was paying attention to § 87(2)(b) during the interaction, not to the other individuals walking around.

Police Officer Brennan noted that § 87(2)(b) could have been issued an additional summons for disorderly conduct. He did not recall whether the area was busy or quiet during the incident and noted that the busyness of the area where the incident occurred depends on the day.

New York City Administrative Code §16-118 prohibits the littering, sweeping, throwing or casting of “any ashes, garbage, paper, dust or other rubbish and refuse of any kind whatsoever, in or upon any street or public place...park, or alley” (Board Review 11).

New York Penal Law §240.20 defines “disorderly conduct” as occurring when a person engages in certain behaviors “with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof” (Board Review 12).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (G) Force: Police Officer Kieran Brennan used physical force against § 87(2)(b)**  
**Allegation (H) Force: Police Officer Ryan Brady used physical force against § 87(2)(b)**

§ 87(2)(b) testified that as the officers finished removing his handcuffs, both Police Officer Brennan and Police Officer Brady shoved him away, causing § 87(2)(b) to fall away from the officers before catching his balance.

BWC footage from Police Officer Brady’s camera shows, at 12:45, § 87(2)(b) twist between the officers while they both appear to have one hand on him. § 87(2)(b) then moves quickly away from the officers in a way that could be caused by a push but could also be driven by § 87(2)(b)’s own movement. § 87(2)(b) then takes a couple of slower steps backwards away from the officers.

BWC footage from Police Officer Brennan’s camera beginning at 12:40 shows § 87(2)(b) moving away from the officers as they each have one hand on him. The officers’ hands disconnect from § 87(2)(b)’s clothing, and Police Officer Brady’s arm extends in the direction § 87(2)(b) is going as § 87(2)(b) moves away from him. It is unclear if the officers are pushing § 87(2)(b) away or if § 87(2)(b) is pulling away and breaking the officers’ holds on him.

Police Officer Brady initially denied that the officers shoved § 87(2)(b) away after removing his handcuffs, then said that he did not recall whether there was a shove.

Police Officer Brennan did not recall pushing § 87(2)(b) away once § 87(2)(b)’s handcuffs were removed. He did not recall whether Police Officer Brady pushed § 87(2)(b) once the handcuffs were removed. § 87(2)(b) “flailed his arms” and “might have brushed against” Police Officer Brennan once the handcuffs were removed. When shown footage from his own BWC from approximately 12:03-12:44, Police Officer Brennan said that the video showed § 87(2)(b) throwing his summons, then moving away from the officers while his hand moved towards them. He had no independent recollection of what he did besides what was captured in the video and did not recall what Police

Officer Brady did in the moments captured by the video.

§ 87(2)(g)

**Allegation (I) Discourtesy: Police Officer Ryan Brady spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that at the end of the incident, Police Officer Brady called § 87(2)(b) “childish” and “less of a man.”

BWC from the incident captured by Police Officer Brady shows Police Officer Brady telling § 87(2)(b) at approximately 10:58-11:03, “You’re a grown man acting like a child...A petulant child. That’s what you’re acting like.” § 87(2)(b) is in handcuffs at this point in the footage.

Police Officer Brady initially did not recall making any discourteous statements towards § 87(2)(b) during the interaction and believed that he and Police Officer Brennan were “professional.” When shown the footage of himself telling § 87(2)(b) that he was “a grown man acting like a child,” he said that § 87(2)(b) was “belligerent” at the time and that he did not realize that he had said that § 87(2)(b) was acting like a child. He did not provide another reason why he said this.

DAO-DCT Case #2015-15012 notes that in a dynamic situation over which an officer is attempting to gain control, an officer can be excused for using discourteous language that would otherwise be inappropriate (Board Review 14). However, language that serves no legitimate purpose but to belittle a civilian does not fall under this exception and is inappropriate.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b) § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 15).
- Police Officer Kieran Brennan has been a member of service for three years and has been a subject in one additional CCRB complaint and six additional allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Ryan Brady has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.

### Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of July 7, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 17).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 2

Investigator: Rachel Murgio Inv. Rachel Murgio 22 Sept. 2021  
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 9/22/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date